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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report of the Secretary-General on the situation of human rights in Myanmar, submitted pursuant to General Assembly resolution 50/194

I. INTRODUCTION

1. The present report is submitted pursuant to paragraph 19 of General Assembly resolution 50/194 of 22 December 1995, entitled "Situation of human rights in Myanmar", in which the Assembly requested me to continue my discussions with the Government of Myanmar in order to assist in the implementation of that resolution and in its efforts for national reconciliation, and to report to the Assembly at its fifty-first session and to the Commission on Human Rights at its fifty-second session.

2. As I have pointed out in previous reports, I consider the role entrusted to me as being one of good offices, as distinct from the fact-finding mandate assigned to the Special Rapporteur by the Commission on Human Rights.

3. The Commission will be aware from my report to the General Assembly that two rounds of talks were held in Yangon and New York in August and October 1995 respectively, between the Minister for Foreign Affairs of Myanmar and my Representative, Assistant Secretary-General for Political Affairs, Mr. Alvaro de Soto, the results of which were conveyed to the Assembly at its fiftieth session (A/50/782).

4. Following the adoption of resolution 50/194 by the General Assembly, the Permanent Representative of Myanmar to the United Nations was approached with the proposal that a new round of talks be held in Yangon, so as to enable me to report to the Commission at its fifty-second session.

5. The Government of Myanmar responded that, owing to the tight schedule of its leadership, it would not be able to receive my Representative in Yangon until after August of this year. My Representative expressed deep disappointment at this reply, stressing the importance of a new visit to Myanmar in advance of the fifty-second session of the Commission. After further consultations, it was agreed that a meeting between the Foreign Minister of Myanmar, U Ohn Gyaw, and my Representative would be held at United Nations Headquarters on 4 April 1996.

II. MATTERS RAISED BY THE SECRETARY-GENERAL'S REPRESENTATIVE

6. The discussions at the meeting centred around the basic matters of concern covered in General Assembly resolution 50/194, which had remained largely unchanged from prior resolutions, notably the lack of a substantive dialogue between the State Law and Order Restoration Council (SLORC) on the one hand and the principal political leaders, including Daw Aung San Suu Kyi and representatives of the national races and ethnic groups, on the other; the composition, procedures and functioning of the National Convention; restrictions on freedom of assembly and other basic political freedoms; matters relating to political prisoners, including the desirability of granting the International Committee of the Red Cross (ICRC) free and confidential access to prisoners and detainees; and reports of attacks by the Myanmar armed forces on the Karens and the Karennis, resulting in further refugee outflows. My Representative also referred to the issue of reintegration of the national races into the political life of the country.

III. VIEWS OF THE GOVERNMENT OF MYANMAR

A. National Convention

7. The Convention, according to the Foreign Minister, was the only "disciplined" forum that could deliver a strong Constitution. Progress had recently been achieved through the recent adoption of the chapters dealing with the legislature, executive and judiciary, which reflected democratic principles. The Convention's task was to draft the constitutional guidelines. The actual writing of the Constitution would be undertaken by legal experts provided by the Government in addition to the people designated by the National Convention. The Convention would determine whether the Constitution would eventually be approved by referendum or some other form of popular vote. It was noted that the 1974 Constitution had been put to a referendum.

8. On the issue of the National League for Democracy (NLD) having ceased to participate in the National Convention, according to the Foreign Minister, Daw Aung San Suu Kyi had decided on the NLD's withdrawal from the Convention when it had reconvened in late November 1995, not realizing that, under the Convention's procedures, a two-day consecutive absence resulted in the automatic expulsion from the Convention. Had NLD remained in the Convention, it would have had the opportunity of making its views known as it had done with the 104 guidelines of the Constitution discussed before November 1995.

B. 1990 elections and dialogue with political leaders

9. The Government's position on the question of a dialogue with political leaders, including Daw Aung San Suu Kyi, continues to be that the National Convention is the forum for such a dialogue. Myanmar's priority was "national reconsolidation" and the eradication of national insurgencies. It was "the political party that the international community assumed had legitimacy" that had disturbed this step-by-step process, by not waiting, after the 1990 elections, for the completion of the necessary procedures, which in Myanmar and other countries in the Orient could take a considerable amount of time. There had been no functioning Constitution at the time of the 1990 elections but the term of elected representatives under other constitutions was normally four to five years. It was thus not logical to suggest that a legislature should be formed based on the results of the 1990 election, since almost six years had elapsed in the interim. According to the Foreign Minister, while messages could be and had been conveyed between the Government and Daw Aung San Suu Kyi through contacts, a dialogue with her was not acceptable since it implied that she would be treated on an equal footing with the Government.

C. National races and ethnic groups

10. The Government's position regarding the national races and ethnic groups that had taken up arms was that they would lay down their arms when the Constitution was adopted and that they would do so only with a disciplined Government and not a civilian Government at the helm. Military rule was thus necessary until the Constitution was firmly established. Thereafter, the military did not intend to form a political party, but would continue to take part in the political life of the nation.

11. It was the view of the Government that the recent fighting on the Thai border was a consequence of a split that had taken place within the Karen National Union (KNU) and which had led to the creation of the Democratic Kayin Buddhist Army (DKBA). DKBA was not receiving support from the Government. The Government and KNU, on the other hand, had met on three occasions in Government-controlled territory, and it was a matter of time before KNU returned to the legal fold. As for the Karenni National Progressive Party (KNPP), it had come back to the legal fold as a result of the Government's persuasion, and not under a cease-fire agreement. According to the Foreign Minister, KNPP was now claiming sole control of the area concerned and was declaring that the Government side had broken a cease-fire agreement that had never been signed.

D. Political freedoms

12. With respect to freedom of assembly and the continuing applicability of SLORC Martial Law Order No. 2/88, which, inter alia, forbids outdoor gatherings of more than five people, issues that my Representative raised at the meeting, the Government's priority was to maintain law and order. Since 1990, meetings indoors were allowed without restriction, but prior permission was still necessary for gatherings of over five people outdoors, although no political party to date had asked for such permission. The Government had, however, been

allowing regular gatherings in front of Daw Aung San Suu Kyi's residence, although they were a source of nuisance to the neighbourhood.

E. Access to prisons and detention centres by ICRC

13. My Representative had referred to reports according to which a number of inmates in Insein prison had been penalized for allegedly passing on information on prison conditions to the Special Rapporteur on the situation of human rights in Myanmar and had suggested that international concern on the issue of political prisoners and prison conditions could best be allayed by granting independent access to prisoners and detainees to an internationally recognized organization such as ICRC. The Foreign Minister replied that he was unaware of the particular case mentioned by my Representative but that his Government made no distinctions between political or common prisoners. People whose behaviour was not in line with the law were punished. Though Myanmar had to adhere to its own internal laws and regulations, it had not closed its door to ICRC. The Government was studying a counterproposal it had recently received from ICRC, though no time-frame for its response could be given.

F. Continuation of the dialogue with the Secretary-General

14. The Government has reiterated its willingness to continue its dialogue with me, though it does not consider that it need necessarily take place in Myanmar and consequently has not given a commitment to hold the next meeting in Myanmar.

IV. CONCLUDING OBSERVATIONS

15. I welcome the willingness of the Government of Myanmar to pursue its dialogue with me and my Representative and I am thankful to the Minister for Foreign Affairs for travelling to the United Nations to meet with him. Nevertheless, I regret that it was not possible for my Representative to visit Yangon prior to the submission of the present report. I trust that such a visit will take place in the future since I regard it as essential for the effective implementation of my good offices mandate, in order to gain a first-hand impression of developments in Myanmar, as well as to have an opportunity for an in-depth exchange of views with the highest leadership echelons of the State Law and Order Restoration Council and with other relevant personalities in Myanmar's political scene and thus be in a position to discharge the mandate entrusted to me by the General Assembly and assist in a constructive manner in the process of democratization and national reconciliation.

16. I must also express disappointment at the lack of substantive steps toward alleviating the concerns reflected in General Assembly resolution 50/194. In particular, I regret that the Government has not found it possible to follow up on its welcome release of Daw Aung San Suu Kyi and other prominent political leaders with the opening of a substantive dialogue with them as well as with other political forces and national races as called for by the Assembly and the Commission. I remain committed to pursuing my efforts in the months ahead with the support of the international community and the cooperation of the Government of Myanmar.